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IN THE

Supreme Court of The United States

October Term, 1963
NO. 470

JOHN CLAY,
Petitioner,

vs.

SUN INSURANCE OFFICE LIMITED,
Respondent.

REPLY BRIEF OF THE STATE OF FLORIDA AMICUS CURIAE

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TOPICAL INDEX

	Page
STATEMENT OF THE CASE	1
ARGUMENT	1-7
CONCLUSION	8
APPENDIX	9
CERTIFICATE OF SERVICE	10

AUTHORITIES

Cases

	Page
Asel v. Order of United Commercial Travelers, 197 S.W. 2d 639 (1946)	6
Clay v. Sun Insurance Office, Limited, 363 U. S. 207 (1960)	3
J. B. Effenson Co. v. Three Bays Corporation, Ltd., C. A. (5 Cir. 1956) 238 F. 2d 611	6
Hoagland v. Railway Express Agency, 75 So. 2d 822 (1954)	6
Hornick v. First Catholic Slovak Union of the United States of America, 224 P. 486 (1924)	7
Larson v. Lane, (9 Cir. 1941) 124 F. 2d 121	7
Order of United Commercial Travelers of America v. Meinsen, (8 Cir. 1942) 131 F. 2d 176	7
Scheibel v. Agwilines, Inc., C.C.A. (2 Cir. 1946) 156 F. 2d 636	6

Schluter v. National Union Fire Ins. Co. of Pittsburgh, 144 So. 2d 95 (1962) 2

Sun Insurance Office, Limited v. Clay, (5 Cir. 1963) 319 F. 2d 505 3

Sun Insurance Office, Limited v. Clay, 133 So. 2d 735 (1961) 2

Trammel v. Brotherhood of Locomotive Firemen and Enginemen, 253 P. 2d 329 (1953) 7

Watson v. Employers Liability Assurance Corp., 348 U.S. 66 (1954) 5

STATUTES

Page

Section 95.03, Florida Statutes, 1959 2-8

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On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

REPLY BRIEF OF THE STATE OF FLORIDA AMICUS CURIAE

STATEMENT OF THE CASE

This brief is submitted by the State of Florida as Amicus Curiae on the side of Petitioner. Amicus Curiae adopts the statement of the case and statement of facts as appear in Respondent's main brief.

ARGUMENT

THE FLORIDA STATUTE OF LIMITATION VOIDING ALL PROVISIONS "CONTAINED IN ANY CONTRACT WHATEVER" WHICH SHORTEN THE TIME TO SUE ON A CONTRACT CONTAINING SUCH PROVISIONS TO A PERIOD

LESS THAN THAT PROVIDED BY FLORIDA STATUTES OF LIMITATION, APPLIES TO A CONTRACT OF INSURANCE ISSUED IN ILLINOIS TO A CITIZEN OF ILLINOIS WHEN A LOSS COVERED BY SUCH CONTRACT OF INSURANCE OCCURS IN FLORIDA SUBSEQUENT TO THE INSURED BECOMING A FLORIDA RESIDENT.

The Supreme Court of Florida has held that Section 95.03, Florida Statutes, is applicable to void the twelve month "suit clause" in the insurance contract involved in the case at bar.

> "We think it is . . . clear . . . that the Legislature intended the Act (§95.03, Florida Statutes,) to apply to 'any contract whatever'—foreign or domestic—when Florida's contract therewith, existing at the time of its execution or occurring thereafter, is sufficient to give a court of this state jurisdiction of a suit thereon." *Sun Insurance Office, Limited v. Clay,* 133 So. 2d 735 at 738 (1961).

In *Schluter v. National Union Fire Ins. Co. of Pittsburgh,* 144 So. 2d 95 (1962), the facts of which are almost identical to those of the case at bar, the District Court of Appeal of Florida, Second District, construed Section 95.03, Florida Statutes, as being applicable to void a similar "suit clause" in an insurance policy. Said Court found Section 95.03, Florida Statutes, applicable because "the loss in the off-shore Atlantic coastwise waters of Florida

. . . vests in the Florida court jurisdiction to entertain suit on the policy of insurance."

The United States Circuit Court of Appeals, Fifth Circuit, considered the Florida Supreme Court's affirmative response to the certified question with respect to Section 95.03, Florida Statutes. The Fifth Circuit Court of Appeals was concerned whether the Florida Supreme Court found Section 95.03 applicable because "the Florida Court would have jurisdiction of a suit on the policy" or because "the State of Florida had such significant contacts with the factual phases of the litigation as to give it a permanent interest in the control of the governing legal rules." *Sun Insurance Office, Limited v. Clay*, (5 Cir. 1963) 319 F. 2d 505.

As far as the case at bar is concerned, the precise ground of the Florida Supreme Court's decision is merely academic. It contributes nothing to the outcome of the present case. If Secton 95.03, Florida Statutes, was found applicable because the Florida Courts had jurisdiction, then that construction is binding on the Federal Courts.

> ". . . the question whether under Florida law Section 95.03 is applicable to this contract is one on which the state court's determination is controlling." *Clay v. Sun Insurance Office, Limited*, 363 U.S. 207 at 212 (1960).

If, on the other hand, the Florida Supreme Court found Section 95.03, Florida Statutes, applicable because "significant contacts" were present to warrant such application,

then all that remains is to determine whether those contacts are sufficient to validate the application of the Florida law.

When the instant case first came to the attention of this Court, Mr. Justice Black said:

> "Shortly after the contract was made, Clay moved to Florida and there he lived for several years. His insured property was there all that time. The company knew this fact. Particularly since the company was licensed to do business in Florida, it must have known it might be sued there and that Florida Courts would feel bound by Florida law."

These "significant contacts" validate Florida's application of Section 95.03, Florida Statutes. It is at this time respectfully submitted that when a court considers "significant contacts" it is, in essence, weighing the question whether a State has a sufficient interest to apply its own law in derrogation of some property right.

It is readily admitted that the contract provision in issue was legal under the Illinois law. It is also admitted, as Respondent so strongly suggests on pages 23 to 26 of his brief, that Illinois has some interest in the contract. But these considerations are not in issue here. On page 29 of Respondent's brief, Section 95.03, Florida Statutes, is characterized as "antiquated." Perhaps Respondent's views would be of interest to the Legislature, but the wisdom of the statute should not concern this Court.

The sole issue involved is whether the interest of the State of Florida is sufficient to justify the application of Section 95.03, Florida Statutes, to invalidate the "suit clause" in the instant contract, and thereby expand the Respondent's period of risk. If the interest of the forum is sufficient, the due process clause does not require states automatically to subordnate their own contract laws to the laws of the other states in which contracts happen to have been executed.

> "Where, as here, a contract affects the people of several states, each may have interests that leave it free to enforce its own policies." *Watson v. Employers Liablity Assurance Corp.*, 345 U.S. 66 at 73 (1954).

Florida presently enjoys the unique position of being one of the leading states in permanent population increase. Persons migrating to Florida intending to become permanent residents of this state undoubtedly bring with them personal property of inestimable value much of which is covered by world-wide personal property floater insurance policies containing provisions similar to those appearing in the policy of insurance giving rise to this case. Persons so situated have a right to look to the State of Florida and its laws for protection against techincal language of insurance contracts which permit the insurer to void the insured's substantive rights under policies of insurance.

As a corollary to such rights, it is the position of the state that in its sovereign capacity it has a responsibility through its legislative, executive and judicial branches of government to assure such persons and their property its

protection by enforcement of all applicable laws, including Section 95.03, Florida Statutes, 1959.

Section 95.03, Florida Statutes, presents a clear and concise legislative pronouncement of the public policy of the State of Florida which should not go unrecognized or held to be inapplicable to the case at bar.

No more cogent interest of a state exists than its responsibility to enforce its laws for the protection of its residents and their property and such protection should attach regardless of the duration of the residency. In those cases where Section 95.03, Florida Statutes, has not been applied to contracts performed within the State of Florida, there has been either a preemption of the field by the Federal law or the contract involved a subject matter peculiarly affected by maritime interests. *Scheibel v. Agwilines, Inc.*, C.C.A. (2 Cir. 1946) 156 F. 2d 636; *J. B. Effenson Co. v. Three Bays Corporation, Ltd.*, C. A. (5 Cir. 1956) 238 F. 2d 611, but see *Hoagland v. Railway Express Agency*, 75 So. 2d 822 (1954).

A complete discussion of the application of a statute of limitation very similar to Section 95.03, Florida Statutes, to an out-of-state contract of insurance and perhaps a case more parallel to this controversy than any other appears in *Asel v. Order of the United Commercial Travelers*, 197 S. W. 2d 639 (1946). The highest court of the State of Missouri held the "commencement of action" limiting provisions in an out-of-state contract of insurance must give way to the public policy as expressed in a state statute, applicable to all contracts, which declared void

contractual provisions either directly or indirectly limiting or intending to limit the time in which any suit or action could be instituted. See also *Hornick v. First Catholic Slovak Union of the United States of America*, 224 P. 486 (1924); *Larson v. Lane*, (9 Cir. 1941) 124 F. 2d 121; *Order of United Commercial Travelers of America v. Meinsen*, (8 Cir. 1942) 131 F. 2d 176; *Trammel v. Brotherhood of Locomotive Firemen and Enginemen*, 253 P. 2d 329 (1953).

In the case at bar the interests of the State of Florida are superior to the interests of any other state because public policy of the State of Florida, reflected by the legislative pronouncement of that policy appearing in Section 95.03, Florida Statutes, is involved; Florida was the place of performance of the contract; it was the place in which the cause of action arose; it was the state of the policyholder's domicile; the insurance company admitted to do business in Florida was subject to regulation of its business by Florida; and finally, contracts of insurance are a type of commercial endeavor in which regulation in the public interest is essential.

CONCLUSION

The application of Section 95.03, Florida Statutes, to invalidate the "suit clause" in the instant contract is not violative of due process. The opinion of the United States Court of Appeals for the Fifth Circuit, dated June 19, 1963, is seriously prejudicial to the interests of the State of Florida in its attempts to regulate insurance on lives and property of citizens of Florida, and should be reversed.

Respectfully submitted,

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APPENDIX

Chapter 6465, Laws of 1913:

"AN ACT to Declare Illegal and Void Stipulations and Provisions in Contracts Fixing the Period of Time in Which Suits May Be Instituted Which Shall Be Less Than the Period of Time Fixed by the Statute of Limitations of This State.

"BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF FLORIDA:

"Section 1. That all provisions and stipulations contained in any contract whatever entered into after this Act shall become effective, fixing the period of time in which suits may be instituted under any such contract, or upon any matter growing out of the provisions of any such contract, at a period of time less than that provided by the statute of limitations of this State, are hereby declared to be contrary to the public policy of this State, and to be illegal and void.

"Section 2. That no court in this State shall give effect to any provision or stipulation of the character mentioned in Section 1 hereof.

"Section 3. This Act shall take effect upon becoming a law."

Approved May 26, 1913.

CERTIFICATE OF SERVICE

I, James T. Carlisle, Assistant Attorney General of the State of Florida, do hereby certify that I have mailed true copies of this brief and appendix to Bert Cotton, Esquire, Attorney for Respondent, 56 Pine Street, New York, New York 10005; and to Messrs. Herbert T. Gibson and Paschal C. Reese of Gibson, Gibson & Reese, 209 South Olive, West Palm Beach, Florida, Attorneys for Petitioner, this ——— day of ———, 1964.

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